

### **REMARKS**

This responds to the Final Office Action mailed on July 22, 2008.

No claims are amended, no claims are canceled and no claims are added; as a result, claims 1, 3-22, 24-27, 29-44, 48 and 53-55 remain pending in this application, with claims 4, 6-22, 24, 25, 29-35, 40-43 and 53-55 withdrawn from consideration at this time.

Applicant appreciates the resetting of the response date in light of non-receipt of the reference, Maritzen, with the original Office Action. Applicant notes that Maritzen is an 8-page reference and not a 21-page reference as previously indicated by the Examiner. Specifically, Maritzen (60/298,423) is a provisional application filed on June 14, 2001, to which priority is claimed by U.S. Patent Application Publication No. US2002/0191816, filed on March 27, 2002, and allowed on December 22, 2008 by Examiner Sherr.

Applicant respectfully requests reconsideration of the above-identified application in view of the amendments above and the remarks that follow.

Again, Applicant notes that linking claims must be examined with the elected claims, and should the linking claim be allowed, rejoinder of the inventions must be permitted. MPEP 809.

#### **§ 112 Rejection of the Claims**

Claims 1 and 27 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicant respectfully traverses this rejection.

The phrase “and combinations of” is part of a Markush group, which includes the phrase “selected from.” The abbreviated Markush group language is accepted practice language, with the term “and” being required per the MPEP. Reciting “combinations” is also accepted practice and does not render the claim indefinite.

Reconsideration and withdrawal of this rejection is respectfully requested.

#### **§ 103 Rejection of the Claims**

##### **Claims 1, 27, 36-39, 44, 48 and 56-58**

Claims 1, 27, 36-39, 44, 48 and 56-58 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Misra et al. (U.S. 5,999,711) in view of Maritzen et al. (U.S. 2002/019816/

Prov. App. 60/298,423).

The applicable law has been detailed in the Amendment and Response mailed on June 11, 2007, and is incorporated herein by reference as if fully set forth herein.

The Examiner states that the proposed combination teaches various elements of the claims. Applicant respectfully traverses this assertion and each of the assertions for the various claims, including for the dependent claims, on pages 3-6 of the Office Action.

Applicant again does not admit that Maritzen is prior art and reserves the right to swear behind it. Nevertheless, Applicant respectfully submits that the claims are distinguishable over Maritzen for the reasons argued herein.

Misra does not teach or suggest the invention for all the reasons of record. Misra discusses a method and system for providing certificates holding authentication and authorization information for users/machines. If proper authentication is received, the principal is allowed to log on to the distributed system. As the Examiner again admits, Misra does not disclose authenticating the user identity through at least two authentication mechanisms.

Maritzen does not overcome the deficiencies of the primary reference. Maritzen briefly discusses a method and apparatus for a consumer-centric multiple authentication model which *requires* a biometric identifier in combination with a non-biometric account identifier.

Furthermore, the proposed combination does not teach all of the elements of claim 1 or 27. For example, the proposed combination does not teach at least two authentication mechanisms selected from known secrets, stored secrets, biometrics and combinations thereof, as recited, in part, in claims 1 and 27.

With respect to the dependent claims, it would not have been obvious to modify the various teachings as proposed. Regardless, such proposed modification does not teach all of the claim elements as required.

As described above, Misra does not disclose all the elements of claims 1 and 27. Additionally, the Office admits that Misra fails to disclose authenticating the user identity through at least two authentication mechanisms. However, Maritzen does not provide the elements missing from Misra, as recited in the claims.

Furthermore, it appears the Examiner has impermissibly used hindsight when attempting to combine a 1994 reference (Misra) with Maritzen. See M.P.E.P. § 2143.01 (citing *In re Gordon*

(Fed. Cir. 1984)) which directs the Examiner to avoid impermissible hindsight. That is, the Examiner cannot use the Applicant's structure as a "template" and simply select elements from the references to reconstruct the claimed invention. See *In re Gorman* (Fed. Cir. 1991). "It is difficult but necessary that the decision maker forget what he or she has been taught . . . about the claimed invention and cast the mind back to the time the invention was made (often as here many years), to occupy the mind of one skilled in the \*\*art. >...<" *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, (Fed. Cir. 1983), *cert. denied* (Fed. Cir. 1984).

Therefore, the proposed combination does not teach all elements of claims 1, 27, 36-39, 44, 48 and 56-58 as required. Applicant respectfully requests reconsideration and the withdrawal of the 35 U.S.C. § 103(a) rejection of claims 1, 27, 36-39, 44, 48 and 56-58, and allowance of claims 1, 27, 36-39, 44, 48 and 56-58.

#### Claims 3, 36-39 and 5

Claims 3, 36-39 and 5 were also rejected under 35 U.S.C. § 103(a) as being unpatentable over Misra et al. in view of Maritzen et al. and further in view of Saito et al. (U.S. 6,275,941).

Neither Misra nor Maritzen teach or suggest the claimed invention for all the reasons stated herein. Satio does not overcome the deficiencies of the primary references. Furthermore, it would not have been obvious to modify the various teachings as proposed. Regardless, such proposed modification does not teach all of the claim elements as required.

Claims 3 and 5 depend from claim 1 and claims 36-39 depend from claim 27. These claims recite additional details of the recited methods in independent claims 1 and 27. Claims 1 and 27 are allowable for all the reasons stated herein. Thus, whatever additional details these claims may describe does not render them obvious.

Applicant therefore respectfully requests reconsideration and the withdrawal of the 35 U.S.C. § 103(a) rejection of claims 3, 5 and 36-39 and allowance of claims 3, 5, and 36-39.

#### Reservation of Rights

In the interest of clarity and brevity, Applicant may not have equally addressed every assertion made in the Office Action; however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such

as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

### CONCLUSION

This application has been pending for over seven (7) years. Multiple interviews have taken place and multiple rejections have been overcome. Indeed, after each of the past two interviews between Examiner Sherr and Applicant's Representative, Barbara J. Clark, and the preparation of suggested amendments in subsequent responses, Ms. Clark understood that a Notice of Allowance was a distinct possibility, or, at most, that only minor issues remained, and requested a phone call from Examiner Sherr should a Notice of Allowance not be forthcoming. Each time, however, Applicant has instead received a new round of rejections.

Applicant has hereby addressed the newest concerns of Examiner Sherr and firmly believes that all of the claims are in condition for allowance. If, upon review of the foregoing, Examiner Sherr is still not convinced that the pending claims are in condition for allowance or believes an Advisory Action is warranted, Ms. Clark requests the courtesy of a phone call at (515) 233-3865 to discuss.

Again, Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. Applicant respectfully that the pending claims are patentable over the outstanding rejections.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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